

REMARKS

Claim 9 has been amended to remove multiple dependency language.

Claim 18 has been amended to be dependent from claim 1.

Claim 22 has been amended to correct a typographical error. Claim 23 has been amended to be consistent with claim 22. No change in claim scope is intended or has occurred.

Claims 45 and 47-49 have been canceled.

New claims 50-54 have been introduced wherein claims 52-54 are supported at least by claims 47-49 in the preliminary amendment of 20 March 2002.

No new matter has been introduced, and entry of the amendments is respectfully requested to leave claims 1-41, 43, 44, and 50-54 as pending.

RESPONSE TO RESTRICTION

Reconsideration and modification or withdrawal of the Restriction Requirement is respectfully requested in light of the following remarks.

The Restriction Requirement sets forth the following Groups:

Group I, claims 1-16, 20-21, 24-29, 32-33, and 47;

Group II, claim 17;

Group III, claims 18-19, 22-23, 30-31, 34-44, and 47; and

Group IV, claim 45.

Based on the cancellation of claims 45 and 47-49 in favor of re-presentation as claims 50-54, Applicants believe that new claims 50-54 would be part of Group IV as alleged. Also as amended above, claim 47 has been canceled.

The alleged basis for the Restriction is that Groups II through IV lack the special technical feature of a recombinase-assisted method of modifying a producer cell as presented in claim 1.

Applicants respectfully traverse because contrary to the above allegation, the claims of Groups II-IV do correspond to the same special technical feature as Group I. Specifically, claim 17 of Group II is directed to a retroviral particle obtained from the producer

cell of claim 16, which is obtained by the method of claim 1. Given that claims 1 and 16 are both part of Group I, it is illogical that claim 17 is not in the same group. This is especially inappropriate given that the subject matter of claim 17 can only be produced upon practice of the recombinase assisted method of claim 1, Group I.

Similarly, claims 18, 19, 22 and 23 of Group III, which depend from claim 1 in light of the amendment to claim 18, necessarily have the same special technical feature of requiring the use of the recombinase assisted method of claim 1, Group I. Accordingly, the restriction of claims 18, 19, 22 and 23 away from the subject matter of Group I should be withdrawn.

The restriction of claims 30, 31, 34-41, 43 and 44 of Group III away from Group I is also in error given that the method of claim 30 specifically recites in section "(ii)" that a "recombinase assisted method" is used. Claims 31, 34-41, 43 and 44 are dependent from claim 30 and thus necessarily have all the limitations of claim 30. Accordingly, claims 30, 31, 34-41, 43 and 44 should not be restricted from Group I.

Last, new claims 50-54, presumably part of Group IV, all have the requirement for the presence of "a 5' recombinase recognition sequence" to permit their use in the recombinase assisted method of claim 1 (compare the language of claim 50, from which claims 51-54 depend, to the "construct" introduced by the method of claim 1). Accordingly, these claims also correspond to the special technical feature of Group I.

In light of the above arguments, Applicants respectfully request reconsideration and withdrawal of the instant Restriction Requirement in favor of a single group comprising pending claims 1-41, 43, 44, and 50-54. Applicants point out that at least amended claims 18, 19, 22 and 23 as well as claims 30, 31, 34-41, 43 and 44 clearly should be part of Group I in light of the express presence of a recombinase assisted method within their scope.

In the event that the Restriction Requirement is maintained, Applicants elect Group I, claims 1-16, 20-21, 24-29, 32-33, with traverse for the reasons provided above.

If the Examiner believes a telephonic discussion would expedite prosecution of this application, she is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,



Kawai Lau, Ph.D.
Reg. No. 44,461

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300